

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

Jurisdictional Separations Reform)
and Referral to the Federal-State)
Joint Board)

CC Docket No. 80-286

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MCI WORLDCOM COMMENTS

I. Introduction

Pursuant to the Commission's February 26, 1999 Public Notice,¹ MCI WorldCom, Inc. (MCI WorldCom) hereby submits its comments on the December 21, 1999 report of the state members of the Federal-State Joint Board on Jurisdictional Separations.

The state members' report addresses several important issues that warrant further examination in the separations reform proceeding initiated by the Separations Reform Notice.² In particular, the report correctly points out that many of the costs the ILECs incur in their competitive and unregulated ventures are currently processed through the separations system and then recovered from customers of incumbent local exchange carrier (ILEC) monopoly services.

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¹Public Notice, DA 99-414, February 26, 1999.

²Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Notice of Proposed Rulemaking, CC Docket No. 80-286, released October 7, 1997.

However, some of the separations reform proposals that are discussed in the report, such as the GTE/U S West proposal to allocate most costs to the intrastate jurisdiction, raise significant legal issues and complex practical questions. MCI WorldCom does not recommend that the Commission initiate further proceedings on this particular question. In our view, it is far more important for regulators to complete the process of revising the regulatory environment than to expend substantial resources probing whether the Interstate Commerce Clause supports a radically different jurisdictional split.

II. Ratepayers of Monopoly Services Should Not Pay for the ILECs' Competitive and Unregulated Ventures

The state members of the Separations Joint Board observe that “more and more services that have been regulated in the past, and many services that have never been regulated, are being provided on an unregulated basis using much of the same telecommunications plant that is subject to separations.”³ They conclude that “it is no longer possible to rely on the operation of Part 36 and Part 64 to address [the] issue” of “determining what costs should be borne by regulated (as opposed to unregulated) services.”⁴

MCI WorldCom and other parties showed in their comments on the Separations Reform Notice that the ILECs have made massive investments in preparation for entry

³Report at 10-11.

⁴Id. at 11.

into competitive or unregulated markets such as the interexchange market, video services market, and Internet services market.⁵ Furthermore, the Commission noted in the Separations Reform Notice that a significant and growing proportion of the costs reported in the ILECs' accounts reflect spare facilities.⁶

The existing Part 64 process does not adequately address the expanding scope of the ILECs' involvement in competitive and unregulated activities. For example, as the state members' report points out, the ILECs exclude almost none of their cable and wire facility investment -- much of which was incurred to provide interexchange, video, and other competitive services -- according to Part 64.⁷ Because the current Part 64 process fails to correctly exclude costs that do not contribute to the provision of regulated services, the separations process then divides these costs among the jurisdictions. The costs allocated to the interstate jurisdiction distort the ILECs' reported interstate rate of return, thereby undermining the Commission's evaluation of the X-Factor and possibly triggering the low-end adjustment mechanism.

MCI WorldCom agrees with the state members of the Separations Joint Board that the time has come for the Commission -- working closely with the states -- to address in a comprehensive manner the cost allocation issues presented by ILEC involvement in unregulated and competitive services.

⁵See, e.g., AT&T Comments at 18-22, CC Docket No. 80-286, December 10, 1997.

⁶Separations Reform Notice at ¶¶70-71.

⁷Report at 12.

III. Internet-related Separations Issues

The state members of the Separations Joint Board indicate that dial-up calls to Internet Service Providers (ISPs) are currently treated as switched intrastate usage for separations purposes, “even though the jurisdictional nature of the communication is undetermined.”⁸ In their view, “these separations problems are of mounting importance as the Internet continues to expand, and particularly as ‘voice-over-internet’ increases.”⁹

Since the state members of the Separations Joint Board completed their report, the Commission has addressed the jurisdictional treatment of ISP-related dial-up traffic in the Reciprocal Compensation Declaratory Ruling.¹⁰ While the Commission found such traffic to be jurisdictionally interstate, the Commission also confirmed that ILECs should continue to treat ISP-bound traffic as intrastate for separations purposes.¹¹ The Commission emphasized that “[w]ith respect to current arrangements, . . . for those

⁸Report at 8.

⁹Id.

¹⁰Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-bound Traffic, CC Docket Nos. 96-98 and CC Docket No. 99-68, Declaratory Ruling and Notice of Proposed Rulemaking, February 26, 1999 (Reciprocal Compensation Declaratory Ruling).

¹¹Id. at ¶36.

ILECs subject to jurisdictional separations both the costs and revenues associated with such connections will continue to be accounted for as intrastate.”¹²

The Commission’s determination that ISP-bound traffic should continue to be treated as intrastate for separations purposes was correct because the reciprocal compensation decision did not disturb the so-called “ESP exemption,” under which ISPs are treated as end users and permitted to purchase local business lines from the ILECs’ intrastate tariffs. Given that ISPs will continue to purchase local business line service from the ILECs’ intrastate tariffs, the traffic sensitive costs incurred in the provision of local business lines to ISPs should also continue to be assigned to the states. The states can then take these costs into account when regulating the local business line rates that are paid by ISPs.

The Reciprocal Compensation Declaratory Ruling is consistent with earlier Commission statements that “ESP traffic over local business lines is treated as local traffic for separations purposes, with the result that the TS costs associated with ESP traffic are apportioned to the intrastate jurisdiction”¹³ More recently, in the Access Reform Order, the Commission emphasized that it is the states that are responsible for the costs associated with the provision of local business line service to ISPs.¹⁴

¹²Id.

¹³ In the Matter of Amendment of Part 69 of the Commission’s Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Notice of Proposed Rulemaking, 4 FCC Rcd 3983, 3987 (1989) (emphasis added).

¹⁴ Access Reform Order at ¶346.

IV. The Separations Joint Board Should Not Study the GTE / U S West Proposal at this Time

While the state members indicate that they do not endorse the GTE/U S West proposal to assign most costs to the intrastate jurisdiction, they suggest that the GTE/U S West proposal may “warrant further study and reflect in [its] broad scope how separations should be reformed.”¹⁵

The GTE/U S West single-jurisdictional scheme has, in theory, several virtues. For example, as the state members of the Separations Joint Board point out, such a scheme would simplify administration because it would do away with the need for usage measurement studies. However, the GTE/U S West proposal raises significant legal and policy issues. As SBC and other parties noted in their reply comments on the Separations Reform Notice, facilities used to provide local exchange service also are used for interstate services, and the Supreme Court has cautioned that “one cannot ignore altogether the actual uses to which the property is put in apportioning jurisdictional responsibilities.”¹⁶

Furthermore, as AT&T discussed in its reply to comments on the Separations Reform Notice, “[s]uch a change . . . would require a fundamental overhaul of virtually

¹⁵Report at 13.

¹⁶Reply Comments of SBC Communications Inc. at 5, CC Docket No. 80-286, January 26, 1998.

all areas of telecommunications regulation.”¹⁷ Efforts to address urgent local competition, universal service, and access reform issues would be undermined by the fundamental restructuring that would accompany implementation of the GTE/ U S West proposal. Rather than undertake such a restructuring at this time, state and federal regulators should address concerns with the current separations system through modifications and clarifications of the existing framework.

V. The Three-Year Rolling Average Proposal Offers Only Marginal Advantages Over the ILECs’ Freeze Proposal

The state members of the Separations Joint Board recommend that the Joint Board consider, as an interim measure, that separations factors be based on a three-year rolling average. The state members suggest that this approach would “balance the benefits of both a freeze and the current procedures while providing a continuity of process and maintaining essential data for monitoring purposes.”¹⁸ Part of the objective of the rolling-average approach would be to “eliminate large fluctuations in jurisdictional allocations while other changes resulting from the 1996 Act, technology, and the move toward a more competitive environment continue.”¹⁹

The three-year rolling average proposal offers some advantages over the ILECs’ freeze proposals. First, there would still be some opportunity for cost allocations to

¹⁷AT&T Reply Comments at 15, CC Docket No. 80-286, January 26, 1998.

¹⁸Report at 15.

¹⁹Id. at 15-16.

respond to changes in relative jurisdictional usage; cost/revenue mismatches would be somewhat less pronounced than under the ILECs' freeze proposals. Second, the proposal would, as the state members of the Joint Board suggest, maintain essential data by requiring continuing development of separations factors.²⁰

However, if cost allocations would otherwise trend in the direction of one of the jurisdictions, the only effect of the moving average approach would be to introduce a lag into the separations process. This could result in a mismatch between costs and revenues similar to (but smaller than) the mismatch that would result from the ILECs' freeze proposals.

The rolling-average proposal would appear to be beneficial only if there would otherwise be "large fluctuations" in jurisdictional allocations. Under such circumstances, it may be appropriate to "dampen[] the impact of usage changes and resultant cost shifts from year to year," especially in cases where rate of return regulation continues to provide a direct link between costs and rates. However, MCI WorldCom is not aware of any ILECs experiencing large year-to-year fluctuations in jurisdictional allocations.

²⁰Id.

VI. Conclusion

The state members' report raises several important issues that warrant further study. However, it would be more appropriate to focus on urgent local competition, access reform, and universal service issues than to undertake the fundamental restructuring that would accompany implementation of the GTE/U S West separations reform proposal.

Respectfully submitted,
MCI WORLDCOM, INC.

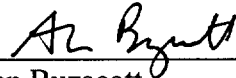
A handwritten signature in black ink, appearing to read "Al Buzacott".

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March 30, 1999

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on March 30, 1999.



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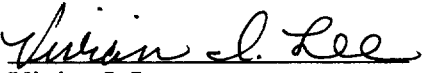
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